

JUN 27 2023

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

Nathan Ochsner, Clerk of Court

UNITED STATES OF AMERICA §
versus § CRIMINAL NO. 4:18-CR-713
JANIS FOWLER-GULDE, ET. AL. §
§
§

**DEFENDANT JANIS FOWLER-GULDE'S MOTION TO VACATE
PURSUANT TO 28 U.S.C§ 2255**

NOW COMES, Defendant Dr. Janis Fowler-Gulde and files this Motion to Vacate Pursuant to 28 U.S.C. §2255 based on new law, *Ruan v. United States* 142 S.Ct. 2370 (2022), and states the following:

1. Defendant was convicted on one Count of Conspiracy to distribute controlled substances on January 13, 2020 pursuant to a plea agreement that she was brow beaten into.
 2. Defendant was sentenced to 15 months as a result of this conviction and has lost her medical license and entire professional life. *See Doc 120.*
 3. On June 27, 2022, the United States Supreme Court issued its opinion in *Ruan v. United States*, 142 S.Ct. 2370 (2022).

In its opinion, the Court held that a medical practitioner may be convicted under the Controlled Substances Act (CSA) only if the practitioner “knowingly or intentionally” prescribes a controlled substance for a non-legitimate medical purpose outside the usual course of the practitioner’s professional practice. *Id.* The Court rejected the argument that Section 841(a) punishes a practitioner if he failed to make an “objectively reasonable good-faith effort” to prescribe controlled substances in an authorized manner. *Id. at 2381.*

4. The only reason Defendant even entered into a plea agreement was because of her attorney’s advice that all that the government would have to prove, through one or two medical expert opinions, was that, in the pure opinions of those experts, Defendant had acted outside the scope of professional practice.
5. With *Ruan*, this standard no longer exists as *Ruan* specifically held that one physician does not become criminally culpable because of the opinion of another physician hired as the government’s expert witness as this is a standard that is commonly used in medical practice cases.

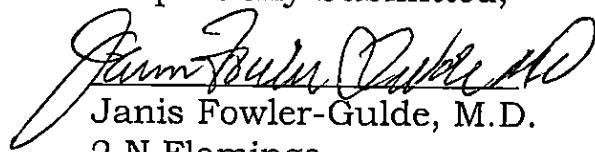
The *Ruan* court unanimously ruled that prosecutors are charged with the task of proving *mens rea* when prosecuting §841 and related charges.

6. Had *Ruan* been decided at the time when Defendant was being brown beaten into entering a plea guilty, Defendant would have never pled guilty.
7. Defendant respectfully requests that she be permitted to retain counsel to brief the Court on this significant change in the law and how this change in the law requires this Court to vacate Defendant's conviction.
8. Defendant requests that the Court grant an in-person hearing to hear Defendant's request to vacate her conviction.
9. By filing the instant motion, Defendant reserves the right to follow up with a full memorandum of law once she retains informed counsel.

WHEREFORE, Defendant, JANIS FOWLER-GULDE, respectfully requests that this Court grant this motion, and grant

any other and further relief as the Court may deem just and proper.

Respectfully Submitted,



Janis Fowler-Gulde, M.D.

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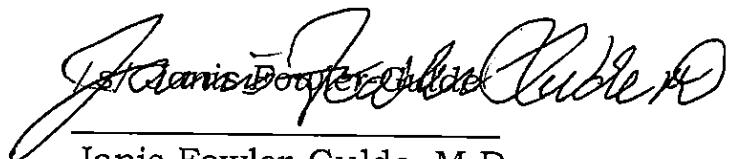
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this document was hand delivered to Clerk of Court in the Southern District of Texas and that same document will be served by electronic transmission on all opposing counsel, including the designated Assistant United States Attorney on this 27th day of June, 2023.



Janis Fowler-Gulde, M.D.